

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
MEDFORD DIVISION

PAMELA GALE SHELDON,
Individually and as Personal Representative of
the Estate of **BILL JACK SHELDON**,

Plaintiff,

V.

CLEAVER-BROOKS, INC.,
f/k/a AQUA-CHEM, INC. d/b/a CLEAVER-
BROOKS DIVISION
USNR, LLC,
as successor-in-interest to THE COE
MANUFACTURING COMPANY
WELLONS, INC.:

Defendants.

Case No. 1:19-CV-01443-MC

**SECOND AMENDED COMPLAINT
FOR WRONGFUL DEATH AND
SURVIVORSHIP
(STRICT LIABILITY;
NEGLIGENCE; AND LOSS OF
CONSORTIUM)**

DEMAND FOR JURY TRIAL

**CLAIM NOT SUBJECT TO
MANDATORY ARBITRATION**

Prayer Amount: \$50,000,000

ORS 21.160(1)(e)

1

Plaintiff alleges at all material times:

a) Defendant, **CLEAVER-BROOKS, INC.** (*f/k/a* AQUA-CHEM, INC. *d/b/a* Cleaver-Brooks Division), was and is a Delaware corporation, not registered to do business in the State of Oregon, with its principal place of business in Thomasville, Georgia. At all times material hereto, CLEAVER-BROOKS, INC. was engaged in either the mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Cleaver-Brooks boilers. CLEAVER-BROOKS, INC. is sued as a Product Defendant. Plaintiff's claims against CLEAVER-BROOKS, INC. arise out of this Defendant's business activities in the State of Oregon.

b) Defendant, USNR, LLC (*as successor-in-interest to THE COE MANUFACTURING COMPANY*), was and is a Delaware limited liability company with its principal place of business in Woodland, Washington. At all times material hereto, USNR, LLC was engaged in either the mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Coe dryers. USNR, LLC is sued as a Product Defendant. Plaintiff's claims against USNR, LLC arise out of this Defendant's business activities in the State of Oregon.

c) Defendant, **WELLONS, INC.**, was and is an Oregon corporation with its principal place of business in Vancouver, Washington. At all times material hereto, **WELLONS, INC.** was engaged in either the mined, manufactured, processed,

1 imported, converted, compounded, supplied, installed, replaced, repaired, used,
2 and/or retailed asbestos and/or asbestos-containing products, materials, or
3 equipment, including, but not limited to, asbestos-containing boilers. WELLONS,
4 INC. is sued as a Product Defendant. Plaintiff's claims against WELLONS, INC.
5 arise out of this Defendant's business activities in the State of Oregon.

6 2.

7 Plaintiff, Pamela Gale Sheldon, is the duly appointed Personal Representative of the Estate
8 of Bill Jack Sheldon (deceased), and a resident of the US Virgin Islands. Decedent Bill Jack
9 Sheldon was diagnosed with mesothelioma, a cancer of the lining of the lungs caused by exposure
10 to asbestos.

11 3.

12 At all material times:

13 The Defendants manufactured, sold, and/or distributed asbestos, asbestos-containing
14 products and/or materials for use in Oregon. At all times relevant to this action, the Defendants
15 and the predecessors of the Defendants for whose actions the Defendants are legally responsible,
16 were engaged in the manufacture, sale, and distribution of asbestos-containing products, material,
17 and/or raw material. ORCP 4D(2)

18 4.

19 At all times relevant to this action, Defendants conducted regular and sustained business
20 activities in the State of Oregon out of which the claims for relief arose. ORCP 4A(4)

21 5.

22 Decedent BILL JACK SHELDON died from mesothelioma on July 24, 2018. This
23 complaint is filed within the applicable statute of limitations.

1 6.

2 Decedent BILL JACK SHELDON was exposed to asbestos-containing products and
3 equipment containing asbestos materials which was manufactured, supplied, distributed and/or
4 specified by Defendants. Decedent BILL JACK SHELDON was exposed to airborne asbestos
5 fibers, both directly working with asbestos and asbestos-containing materials and by working in
6 the vicinity of other workers handling asbestos products from approximately 1972 to 1994 (See
7 Exhibit A). From 1972 to 1994, Decedent worked as a core feeder on the Layup Line at the
8 KOGAP Plywood/Veneer Mill in Medford, Oregon. This involved working with and around hot
9 presses, cold presses, rollers, conveyors and heating equipment exposing him to dust from
10 asbestos-containing products.

11 **FIRST CLAIM FOR RELIEF**

12 **(Strict Liability)**

13 7.

14 Plaintiff re-alleges paragraphs 1-6.

15 8.

16 The asbestos fibers, asbestos-containing products, and equipment utilizing asbestos-
17 containing products of the defendants were unreasonably dangerous and defective in that:

- 18 a) Defendants did not provide sufficient warnings and/or instructions about harm
19 caused by exposure to Defendants' asbestos fibers, asbestos-containing products
20 and equipment utilizing asbestos-containing products;
- 21 b) The asbestos fibers in the asbestos-containing products and equipment utilizing
22 asbestos-containing products of Defendants were capable of causing mesothelioma

when inhaled by individuals, including Decedent BILL JACK SHELDON, making them unreasonably dangerous to the ordinary consumer; and

- c) Individuals, including Decedent BILL JACK SHELDON, who came into contact with asbestos fibers, were not advised to utilize proper respiratory protection when exposed to airborne asbestos fibers within their working environment.

9.

As a result of Decedent's exposure to the unreasonably dangerous and defective asbestos-containing products manufactured, distributed, sold, installed, applied or containing the Defendants' asbestos fiber, Decedent contracted mesothelioma, from which he died. Decedent's Estate suffered non-economic damages for the loss of society and companionship, grief, anguish, and for the conscious pain and suffering sustained by the Decedent prior to his death, to the Decedent's Estate's non-economic damage in the amount of \$49,000,000.

10.

As a result of Decedent's exposure to the unreasonably dangerous and defective asbestos-containing products manufactured, supplied, distributed, sold, installed, applied or containing the Defendants' asbestos fiber, Decedent contracted mesothelioma, from which he died. Decedent's Estate has suffered economic damages for medical bills, funeral and burial expenses, and lost earning capacity in the amount of \$1,000,000.

11.

As a result of Decedent's exposure to the unreasonably dangerous and defective asbestos-containing products manufactured, distributed, sold, installed, applied or containing asbestos fiber, Decedent contracted mesothelioma, from which he died. Decedent's Estate suffered non-economic damages for the loss of society and companionship, grief, anguish, and for the conscious pain and

1 suffering sustained by the Decedent prior to his death, to the Decedent's Estate's non-economic
2 damage in the amount of \$49,000,000.

3 12.

4 As a result of Decedent's exposure to the unreasonably dangerous and defective asbestos-
5 containing products manufactured, distributed, sold, installed, applied or containing the
6 Defendants' asbestos fiber, Decedent contracted mesothelioma, from which he died. Decedent's
7 Estate has suffered economic damages for medical bills, funeral and burial expenses, and lost
8 earning capacity in the amount of \$1,000,000.

9 **SECOND CLAIM FOR RELIEF**

10 **(Negligence)**

11 13.

12 Plaintiff re-alleges paragraphs 1-12.

13 14.

14 Defendants were negligent generally and in one or more of the following particulars:

- 15 a) Defendants did not provide sufficient or adequate warnings and/or instructions of
16 the harm caused by exposure to Defendants' asbestos-containing products and
17 equipment utilizing asbestos-containing products. Defendants, prior to the period
18 of Decedent's exposure to asbestos, possessed information concerning the adverse
19 effects and disease-producing capabilities of those products and equipment;
- 20 b) Defendants failed to withdraw asbestos-containing products and equipment
21 utilizing asbestos-containing products from the market prior Decedent's exposure,

1 when Defendants possessed information concerning the adverse effects and
2 disease-producing capabilities of those products and equipment;

- 3 c) Defendants failed to determine the level of airborne asbestos fibers emitted by their
4 products and equipment when the products and equipment were being used by the
5 end user;
- 6 d) Defendants failed to conduct tests to determine the amount of asbestos to which
7 Decedent BILL JACK SHELDON, or similarly situated workers, would be
8 exposed, when workers engaged in the use of these products and equipment; and
- 9 e) Defendants failed to warn individual workers, including Decedent, regarding the
10 hazards associated with the use of their asbestos-containing products and
11 equipment utilizing asbestos-containing products.

12 15.

13 As a result of Defendants' negligence as set forth above, Decedent contracted
14 mesothelioma, from which he died. Decedent's Estate suffered non-economic damages for the
15 loss of society and companionship, grief, anguish, and for the conscious pain and suffering
16 sustained by the Decedent prior to his death, to the Decedent's Estate's non-economic damage
17 in the amount of \$49,000,000.

18 16.

19 As a result of Defendants' negligence as set forth above, Decedent contracted
20 mesothelioma, from which he died. Decedent's Estate has suffered economic damages for
21 medical bills, funeral and burial expenses, and lost earning capacity in the amount of \$1,000,000.

22 17.

23 Plaintiff demands a jury trial.

WHEREFORE, Plaintiff prays for judgment as follows:

FIRST CLAIM FOR RELIEF (Strict Liability):

1. Non-economic damages in an amount to be ascertained at trial but not to exceed \$49,000,000.

2. Economic damages in an amount to be ascertained at trial but not to exceed \$1,000,000.

3. Plaintiff's costs and disbursements incurred herein.

4. Any other costs this court deems equitable.

SECOND CLAIM FOR RELIEF (Negligence):

1. Non-economic damages in an amount to be ascertained at trial but not to exceed \$49,000,000.

2. Economic damages in an amount to be ascertained at trial but not to exceed \$1,000,000.

3. Plaintiff's costs and disbursements incurred herein.

4. Any other costs this court deems equitable.

DATED: March 5, 2020.

DEAN OMAR BRANHAM SHIRLEY, LLP

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6 *Attorneys for Plaintiff*

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CERTIFICATE OF SERVICE

I hereby certify that on March 5, 2020, Plaintiff's Second Amended Complaint was electronically filed and served on all counsel of record.

<p>Allen Eraut Kevin Bergstrom RIZZO MATTINGLY & BOSWORTH, PC 1300 SW Sixth Avenue, Suite 330 Portland, OR 97201</p> <p>COUNSEL FOR CLEAVER-BROOKS, INC.</p>	<p>Jeffrey S. Mutnick LAW OFFICE OF JEFFREY S. MUTNICK 737 SW Vista Avenue Portland, OR 97205</p> <p>CO-COUNSEL FOR PLAINTIFF</p>
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DEAN OMAR BRANHAM SHIRLEY, LLP

/s/ Monica Furino
MONICA FURINO